

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

CAREN ROSE DACUMOS,

Plaintiff,

v.

TOYOTA MOTOR CREDIT
CORPORATION, et al.,

Defendants.

Case No. 2:17-cv-00964-RSM

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEFENDANT TOYOTA
MOTOR CREDIT CORPORATION'S
MOTION FOR JUDGMENT ON THE
PLEADINGS**

**[Filed concurrently with Motion For
Judgment On The Pleadings]**

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
DEFENDANT TOYOTA MOTOR CREDIT
CORPORATION'S MOTION FOR JUDGMENT ON THE
PLEADINGS - 1
Case No. 2:17-cv-00964-RSM

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Defendant Toyota Motor Credit Corporation (“TMCC”) requests that the Court take judicial notice of the true and correct copies of the following documents in connection with its Motion for Judgment on the Pleadings as to Plaintiff Caren Rose Dacumos (“Plaintiff”):

- **Exhibit A:** A true and correct copy of the docket in *Toyota Motor Credit Corporation v. Melanthon Ibañez and Carenrose Dacumos*, Case No. 15-2-13622-412 KNT (the “Docket”), the collection action against Plaintiff and co-borrower brought in The Superior Court of the State of Washington for King County (the “Collection Action”).
- **Exhibit B:** A true and correct copy of Docket Item 1 of 21 in the Collection Action: TMCC’s Complaint for Monies Due in the Collection Action against Mel Anthony Ibanez and Plaintiff, filed on June 5, 2015 in The Superior Court of State of Washington for King County, Case No. 15-2-13622-4 KNT.
- **Exhibit C:** A true and correct copy of Docket Item 2 of 21 in the Collection Action: Court’s Order Setting Civil Case Schedule in the Collection Action, filed on June 5, 2015.
- **Exhibit D:** A true and correct copy of Docket Item 3 of 21 in the Collection Action: Case Information Cover Sheet and Area Designation, filed on June 5, 2015.
- **Exhibit E:** A true and correct copy of Docket Item 4 of 21 in the Collection Action: Summons, filed by TMCC on June 5, 2015.
- **Exhibit F:** A true and correct copy of Docket Item 5 of 21 in the Collection Action: Served Summons and Complaint, filed on June 8, 2015.
- **Exhibit G:** A true and correct copy of Docket Item 6 of 21 in the Collection Action: TMCC’s Cost Bill, filed on June 8, 2015.
- Note, Docket Item 7 of 21, which is TMCC’s unredacted Motion for Default Judgment, filed on June 8, 2016, was sealed because it contained Plaintiff’s personal identifying information. *See* Exhs. A & Q. It is therefore unavailable. However, the redacted Motion is Exhibit R, filed on August 13, 2015.
- **Exhibit H:** A true and correct copy of Docket Item 8 of 21 in the Collection Action: Order of Default Judgment against Plaintiff and Melanthon Ibanez, filed and entered June 8, 2015.

- **Exhibit I:** A true and correct copy of Docket Item 9 of 21 in the Collection Action: Served Summons and Complaint, filed by TMCC on June 10, 2015.
- **Exhibit J:** A true and correct copy of Docket Item 10 of 21 in the Collection Action: Declaration of Service Member, filed by TMCC on June 10, 2015.
- **Exhibit K:** A true and correct copy of Docket Item 11 of 21 in the Collection Action: TMCC's Motion to Vacate Order of Default and Default Judgment against Plaintiff, filed on July 7, 2015.
- **Exhibit L:** A true and correct copy of Docket Item 12 of 21 in the Collection Action: Order Vacating Default and Default Judgment, filed and entered on July 7, 2015.
- **Exhibit M:** A true and correct copy of Docket Item 13 of 21 in the Collection Action: TMCC's Motion to Seal or Return Original Filed Documents, filed on July 30, 2015.
- **Exhibit N:** A true and correct copy of Docket Item 14 of 21 in the Collection Action: Minute Order re denial of Motion to Seal or Return Original Filed Documents, entered by Court on July 31, 2015.
- **Exhibit O:** A true and correct copy of Docket Item 15 of 21 in the Collection Action: Minute Order re denial of Motion to Seal or Return Original Filed Documents, entered by Court on August 4, 2015.
- **Exhibit P:** A true and correct copy of Docket Item 16 of 21 in the Collection Action: TMCC's Motion to Seal or Return Original Filed Documents, filed on August 5, 2015.
- **Exhibit Q:** A true and correct copy of Docket Item 17 of 21 in the Collection Action: Order granting TMCC's Motion to Seal or Return Original Filed Documents and ordering Docket Item 7 sealed, entered on August 13, 2015.
- **Exhibit R:** A true and correct copy of Docket Item 18 of 21 in the Collection Action: TMCC's Redacted Motion and Declaration for Default and Judgment, filed August 13, 2015.
- **Exhibit S:** A true and correct copy of Docket Item 19 of 21 in the Collection Action: Defendant Toyota's Reply on Motion for Summary Judgment in the matter of *Caren Dacumos v. Patenaude & Felix et al.*, Superior Court of

Washington for King County, Case No. 15-2-26288. This document appears to relate to another case and was inadvertently filed in the Collection Action.

- **Exhibit T:** A true and correct copy of Docket Item 20 of 21 in the Collection Action: TMCC's Motion for Order of Dismissal with Prejudice of the Collection Action, filed on June 28, 2016.
- **Exhibit U:** A true and correct copy of Docket Item 21 of 21 in the Collection Action: Court's Order of Dismissal with Prejudice of the Collection Action against Plaintiff, entered on June 29, 2016.

LEGAL ARGUMENT

Pursuant to Federal Rule of Evidence 201, the court may take judicial notice of adjudicative facts, which are either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b). For example, the Court may take judicial notice of facts that are a matter of public record. *See Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001); *Campanelli v. Bockrath*, 100 F.3d 1476, 1479 (9th Cir. 1996). Such matters of public record include court docket and records, pleadings, orders and other papers filed with courts. *See Mullis v. United States Bankruptcy Court*, 828 F.2d 1385, 1388 (9th Cir. 1987); *Richardson v. Yates*, 435 Fed. Appx. 625, 626 (9th Cir. 2011) (granting judicial notice of court docket and records); *Porter v. Ollison*, 620 F.3d 952, 955 (9th Cir. 2010) ("Judicial notice is taken of the court dockets in the state court proceedings.").

In addition, under the incorporation by reference doctrine, "documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading," may be considered in ruling on a pleadings challenge. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994) *overruled in part on other grounds by Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002) ("[A] document is not 'outside' the complaint if the complaint specifically refers to the document and if its

1 authenticity is not questioned”; a court may properly consider such document in ruling on a
 2 motion to dismiss); *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007).

3 The Ninth Circuit has “extended the ‘incorporation by reference’ doctrine to situations
 4 in which the plaintiff's claim depends on the contents of a document, the defendant attaches the
 5 document to its motion to dismiss, and the parties do not dispute the authenticity of the
 6 documents, even though the plaintiff does not explicitly allege the contents of that document in
 7 the complaint.” *Kniesel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005); *Campidoglio LLC v.*
 8 *Wells Fargo & Co.*, No. C12-949 TSZ, 2012 WL 4514333, at *3 (W.D. Wash. Oct. 2, 2012).
 9 One purpose of this rule is to prevent “plaintiffs from surviving a Rule 12(b)(6) motion by
 10 deliberately omitting references to documents upon which their claims are based.” *Parrino v.*
 11 *FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998), *as amended* (July 28, 1998).

12 The Court should judicially notice the above exhibits. First, they are matters of public
 13 record. Second, the exhibits are state-court filings that are either referenced in the Complaint
 14 and/or form the basis for Plaintiff’s claim under the Fair Credit Reporting Act (“FCRA”).
 15 Third, taking judicial notice of these exhibits, rather than relying solely on Plaintiff’s
 16 descriptions of them in the Complaint, will prevent Plaintiff from deliberately omitting relevant
 17 references in the documents.

18 CONCLUSION

19 For the foregoing reasons, the Court should take judicial notice of the above exhibits.

20
 21 DATE: November 1, 2017

22 LANE POWELL PC

23 By: /s/ Abraham K. Lorber

24 Abraham K. Lorber, WSBA No. 40668

25 John S. Devlin, III, WSBA No. 23988

26 REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
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26 REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
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CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2017, the foregoing document was filed via the Court's CM/ECF system, which will automatically serve and send email notification of such filing to all registered attorneys of record.

DATE: November 1, 2017

REED SMITH LLP

By: /s/ Zachary C. Frampton
Zachary C. Frampton, Admitted *Pro Hac Vice*
Attorneys for Defendant
Toyota Motor Credit Corporation

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
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